IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24161 of 2007

With

SPECIAL CIVIL APPLICATION No. 24162 of 2007

To

SPECIAL CIVIL APPLICATION No. 24213 of 2007

With

SPECIAL CIVIL APPLICATION No. 24219 of 2007

To

SPECIAL CIVIL APPLICATION No. 24222 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **YES**

2 To be referred to the Reporter or not ? **YES**

3 Whether their Lordships wish to see the fair copy of the judgment ? **YES**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **NO**

5 Whether it is to be circulated to the civil judge ? **NO**

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DHABJI MEGHJI MAHESHWARI & 55 - Petitioner(s)

Versus

HINDUSTAN LEVER LIMITED & 3 - Respondent(s)

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Appearance :
MS SANGITA C ATHAVLE for Petitioner(s) : 1 - 56.
MRS SANGEETA PAHWA FOR M/S THAKKAR ASSOC. for Respondent(s) : 1 – 2.
MR SUNIT SHAH, GP WITH MS VAIJAYANTI PATHAK – AGP, MR UMANG OZA – AGP AND MR KJ DWIVEDI – AGP for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 29/10/2007

ORAL JUDGMENT

1. Heard the learned advocates appearing on behalf of respective parties.

2. **RULE**. Learned advocate Mrs. Sangeeta Pahwa for M/s. Thakkar Associates waives the service of notice of rule on behalf of respondent Nos.1 and 2 and learned GP Mr. Sunit Shah waives the service of notice of rule on behalf of respondent Nos.3 and 4 – State Authorities.

3. Today, all the learned advocates appearing on behalf of respective parties requested this Court to take up this group of matters for hearing and final disposal. Therefore, this Court has taken up this group of matters for hearing and final disposal today with the consent of all the learned advocates.

4. The petitioners challenged the award passed by Labour Court, Gandhidham (Kachchh) in Reference (LCG) No.4 of 2005 to 48 of 2005 with No.62 of 2005 to 94 of 2005 with No.100 of 2005 to 102 of 2005 dated 30th September 2006, wherein, Labour Court, Gandhidham has rejected all the References on the ground that Assistant Labour Commissioner, Gandhidham has no jurisdiction, being an appropriate Government, to refer the industrial disputes raised by present petitioners for adjudication under Section 10(1) of the Industrial Disputes Act, 1947.

5. The services of the petitioners were terminated in the year 2004, therefore, they raised industrial disputes under Section 2(A) of the Industrial Disputes Act, 1947, which gives a legal right in favour of concerned workmen that in case, if, any employer discharge/dismiss/retrench or otherwise terminate the services of individual workman any dispute by differences between that workman and his employer connected with or arising out of such discharge/dismissal/retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any Union of workmen is a party to the dispute. The definition of Section 2(k) of Industrial Disputes Act, where, in Gujarat amendment, in Section 2(k), at the end, insert the words and letters "**but does not include the termination of the service of a workman in accordance with the provisions of Chapter VD**". *This amendment comes into force vide Gujarat Act 12 of 2004, Section 2(1) w.e.f. 10th February 2004. The Chapter VD is added by State Amendment in Industrial Disputes Act, 1947 for applying the aforesaid Chapter 2(N) industrial disputes set up in the special economic zone declared as such by Government of India. Chapter VA and Chapter VB shall not apply for an industrial dispute establishment, to which, Chapter VD applied.*

6. In affidavit-in-reply, the Assistant Commissioner of Labour has incorporated the aforesaid amendment, but, according to my opinion, for examining this matter or award in question, this

amendment is not related or any way connected to the challenge of the award in question. Therefore, this Court has not taken into account the Chapter VD and amending Section 2(k) by Gujarat Amendment Act, 10th February 2004 and also not expressing any opinion.

7. Before the Labour Court, the respondent appeared on being reference made to the Labour Court, Gandhidham. The industrial disputes raised by the petitioner referred for adjudication by Assistant Commissioner of Labour, Gandhidham. Before the Labour Court, respondent Nos.1 and 2 submitted the reply and raised preliminary point or contention that this order of reference is made by or referred by Assistant Commissioner of Labour, Gandhidham, but, powers are with Development Commissioner which has not been delegated to Labour Commissioner or Assistant Commissioner of Labour, therefore, order of reference is itself bad. This aspect has been examined by the Labour Court while considering Section 17 of Gujarat Ordinance No.I of 2004 which is applied to Special Economic Zone to the State of Gujarat and to constitute an Authority and for matters connected therewith or incidental thereto. Section 17(1) and Section 17(2) of Chapter VII which are quoted as under :

> *"**Chapter VII, Sec.17** :* **Delegation of powers of Labour Commissioner to Development Commissioner :(1)** Notwithstanding anything contained in the Acts specified in Schedule

I, the powers, duties and functions conferred on Commissioner of Labour of any officer under those Acts shall be exercised by the Development Commissioner or any officer authorised by him in this behalf.

Section-2 : The State Government may, as and when considered necessary, by notification in the Official Gazette, amend Schedule I and thereupon Schedule I shall be deemed to have been amended accordingly.“

8. In view of aforesaid provisions made in Section 17, the delegation of powers of Labour Commissioner in respect to duties and functions conferred on Commissioner of Labour of any officer under those Acts shall be exercised by the Development Commissioner or any officer authorised by him in this behalf and State Government has power to amend Schedule I, meaning thereby that, all the powers of Labour Commissioner are now enjoyed by Development Commissioner in respect to Schedule I specified by amended Act.

9. Learned advocate Mrs. Pahwa for respondent Nos.1 and 2 submitted that Section 11 and Section 12 of Special Economic Zones Act, where, powers of Development Commissioner is specified which are quoted as under :

“Section 11 – Development Commissioner

(1) The Central Government may appoint any of its officers not below the rank of Deputy Secretary to the Government of India as the Development Commissioner of one or more Special Economic Zones.

(2) The Central Government may appoint such officers and other employees as it considers necessary to assist the Development Commissioner in the performance of his functions in the Special Economic Zones established by a Developer (other than Central Government) under this Act on such terms and conditions as it deems fit.

(3) Every Development Commissioner, officers and other employee shall be entitled to such salary and allowances and subject to such terms and conditions of service in respect of leave, pension, provident fund and other matters as may, from time to time, be specified by the Central Government.

Section 12 – Functions of Development Commissioner :

(1) Every Development Commissioner shall take all steps in order to discharge his functions under this Act to ensure speedy development of the Special Economic Zone and promotion of exports therefrom.

(2) Without prejudice to the generality of the foregoing provisions, the Development Commissioner shall -

(a) guide the entrepreneurs for setting up of Units in the Special Economic Zone;

(b) ensure and take suitable steps for effective promotion of exports from the Special Economic Zone;

(c) ensure proper co-ordination with the Central Government or State Government Departments concerned or agencies with respect to, or for the purposes, of clauses (a) and (b);

(d) monitor the performance of the Developer and the Units in a special Economic Zone;

(e) discharge such other functions as may be assigned to him by the Central Government under this Act or any other law for the time being in force; and

(f) discharge such other functions as may be delegated to him by the Board.

(3) Every Development Commissioner shall be overall in charge of the Special Economic Zone and shall exercise administrative control and supervision over the officers and employees appointed under sub-section (2) of

section 11 (including the officials deputed to such Special Economic Zone) to discharge any of the functions under this Act.

(4) Without prejudice to the provisions of sub-sections (1) to (3), every Development Commissioner shall discharge such functions and exercise such powers as may be delegated to him by a general or special order by the Central Government or the State Government concerned, as the case may be.

(5) Every Development Commissioner may call for such information from a Developer or Unit from time to time as may be necessary to monitor the performance of the Developer or the Unit, as the case may be.

(6) The Development Commissioner, may, delegate any or all of his powers or functions to any of the officers employed under him."

10. Relying upon the aforesaid two Sections, learned advocate Mrs. Pahwa submitted that Development Commissioner has not delegated the powers to the officers who has been employed under him. The *Assistant Commissioner of Labour working under the State Government is not an officer employed under him.*

11. Learned advocate Mrs. Pahwa also submitted that the powers of the Labour Commissioner is given to Development Commissioner under Section 17, and then, again, by sub-delegation of powers, Development Commissioner is given back to the Labour Commissioner and to Assistant Commissioner of Labour, then, whole purpose is frustrated. Therefore, she submitted that Labour Court has rightly examined the issue and rejected the reference because Assistant Commissioner of Labour has no jurisdiction to refer the dispute for adjudication to the Labour Court, Gandhidham.

12. Learned advocate Mrs. Pahwa relied upon the Order passed by Deputy Development Commissioner, Kandla Special Economic Zone - Page 26, which is quoted as under :

> ***"In connection to this Office Order of even number dated 31/03/2005 the Development Commissioner, Kandla Special Economic Zone (KASEZ), Gandhidham hereby authorizes the Asstt. Labour Commissioner, Government Labour Office, Gandhidham and the Asstt. Director, Industrial Safety and Health, Adipur and Boiler Inspector, Rajkot, to discharge till 31/03/2006, or till as may be otherwise specified, all the duties and functions related to the respective Acts, in so far as they relate to the labour and industrial operations of Kandla Special Economic Zone.***

All statutory intimations, reports, appeals, etc., on these matters shall lie with the Development Commissioner as per the power delegation Scheme under the Gujarat State Special Economic Zone Act, 2004.

This issues with the approval of the Development Commissioner, Kandla Special Economic Zone.“

13. From relying upon the aforesaid order, she pointed out that Assistant Commissioner of Labour, Government Labour Office, Gandhidham authorised by Deputy Development Commissioner all the duties and functions related to the respective Acts, in so far as they relate to the labour and industrial operations of Kandla Special Economic Zone. All statutory intimations, reports, appeals, etc., on these matters shall lie with the Development Commissioner as per the power delegation Scheme under the Gujarat State Special Economic Zone Act, 2004. Therefore, according to her submission, this legal functions are with the Development Commissioner and same was not delegated to the Assistant Commissioner of Labour. Except that, learned advocate Mrs. Pahwa has not made any other submission and not cited any authority of law in support of her submission.

14. The affidavit-in-reply is filed by Ms. Shruti Pragnesh Modi, Assistant Commissioner of Labour, Gujarat State, Gandhinagar – respondent No.4

herein, where, the specific averments are made in Para 5, 6, 7, 8 and 10 which are quoted as under :

> *"5. I say that the Development Commissioner is the Authority and he is enjoying the powers of Labour Commissioner in the SEZ. The Development Commissioner has delegated powers to the Assistant Labour Commissioner for all the duties and functions related to the respective Acts and on that ground the Assistant Labour Commissioner, Gandhidham Kutch is carrying out all the activities even in SEZ.*
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> *6. I say that the petitioner approached the Hon'ble High Court (Coram : Mr. Justice H.K. Rathod) passed the order. The Hon'ble Court directed whether the Assistant Labour Commissioner, Gandhidham Kutch has jurisdiction to refer for adjudication or not and if the Assistant Labour Commissioner, Gandhidham Kutch has jurisdiction then on what basis any notification is issued by the State Government or Development Commissioner.*
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> *7. I say that the delegation of powers of Labour Commissioner to the Development Commissioner under Section 17(1) of the SEZ Act "Notwithstanding anything contained in the Acts specified in Schedule I, the powers duties and functions conferred on Commissioner of Labour or any officer under those Acts shall be exercised by the Development Commissioner or <u>any officer</u>*

authorized by him in this behalf.

8. I say that the Development Commissioner by his order dated 15.10.04 under Section 17(1) of the SEZ Act confers the Assistant Labour Commissioner the powers, duties and functions of Labour Commissioner which is renewed time by time.

10. I say that as per Section 2A of the Industrial Disputes Act, dismissal etc., of any individual workman to be deemed to be an industrial dispute and when there is any dispute the appropriate Government can refer it to the Board, Court or Tribunal under Section 10(1) of the Industrial Disputes Act."

15. I have considered the submissions made by all the learned advocates and I have also perused the award passed by the Labour Court, Gandhidham and considering the provisions which has been relied upon at Page 19 – Chapter V, Section 17, which is pertaining to delegation of power to Labour Commissioner to Development Commissioner, Special Economic Zone, 2004 is implemented w.e.f. 31st March 2004 by notification Gujarat Special Economic Zone Act, 2004. The powers in respect to Labour Law is given to Development Commissioner in respect to fix/establishment covered by Special Economic Zone. The pending dispute and other pending questions ('Tumar') shall have to be given to Development

Commissioner as ordered by State Government. Therefore, as per the aforesaid notification, *Assistant Commissioner of Labour, Gandhidham (Kachchh) in respect to the factories those who are situated in the area of Free Trade Zone if any dispute w.e.f. 1st April 2004 covered by Special Economic Zone/Development Officers having the jurisdiction w.e.f. 30th March 2004 and Assistant Commissioner of Labour has no jurisdiction to refer the dispute in Gandhidham Are, where, Special Economic Zone is applicable.*

16. The Labour Court has relied upon the aforesaid provisions of Section 17 and rejected the entire references, but, Labour Court has not inquired from Assistant Commissioner of Labour as to whether on what basis, this dispute has been referred by him. The Labour Judge being a Judge who should know that how the reference is made by Assistant Commissioner of Labour when the question is raised by respondent – employer. It is necessary to note that whether respondents are entitled to raise this contention before the Labour Court or not, even, that has not been taken care by Labour Court to consider it, because, against termination, when dispute is raised by concerned employee by filing a separate independent complaint, notice must have to be issued to the employer by Assistant Commissioner of Labour. The employer must have to be remained present before the Assistant Commissioner of Labour, Gandhidham in response to the notice issued by the Assistant

Commissioner of Labour. On that occasion, respondent Nos.1 and 2 have not raised this contention which they have to raise before the Authority who has to take the decision either to refer or not to refer the industrial disputes for adjudication. Not raising the contentions before the Assistant Commissioner of Labour by the respondent employer and allowed to Assistant Commissioner of Labour, Gandhidham to refer the dispute without any objection and which has been referred for adjudication and then to challenge the jurisdiction of the Assistant Commissioner of Labour, normally, Labour Court should not have to allow such challenge by employer, unless the order of reference is to be challenged by employer before the higher forum on the ground that Assistant Commissioner of Labour has no jurisdiction to refer such dispute to the Labour Court, but, Labour Court has not taken care and simply allowed the contentions raised by employer without application of mind, without any responsibility as a Judge, without any further inquiry as a responsible Judge to the effect that before passing such orders which relates to the future of more than 100 workmen, he should have to inquire from the Authority who has referred it that on what basis, the reference is made, then, in such circumstances, authority must have to answer him that on the basis of this, dispute is referred for adjudication. The approach of the Labour Court is totally careless and lethargic, which ultimately the concerned petitioners are really sufferer because from the date of termination till 2007, which comes

to end, a more than three years period is over without any adjudication without any progress which ultimately sufferer is a poor employees on the basis of raising legal and technical contentions by the employer, normally, Labour Court should have to take sufficient care and to have the control against such so-called contentions by the employer, normally, Labour Court should have to take sufficient care and to have the control against such type of preliminary contentions raised by employer, otherwise, it is very difficult to get the justice by the employees against all legal contentions which are available to the employer if it is to be permitted and to be decided by the Labour Court. In this case, Labour Court ought not have to entertain such application only on the ground that this contention was not raised before the concerned authority who has referred it and it is not the case of respondent employer on the preliminary application that this contention was raised by the employer before the Assistant Commissioner of Labour even though he referred the dispute for adjudication. The respondent employer has not challenged the order of reference referred by Assistant Commissioner of Labour to the higher forum, then, whether Labour Court has jurisdiction to decide the legality and validity of reference which has been referred for adjudication by the appropriate Government. The Labour Court cannot decide the legality and validity of the reference if it is referred by appropriate Government for adjudication, otherwise, it amounts to an appeal or higher authority being a Labour Court

against the order of Assistant Commissioner of Labour. Such powers are not with the Labour Court, but, such powers are with this Court to examine the legality and validity of order of reference passed by Assistant Commissioner of Labour, Gandhidham.

17. Therefore, according to my opinion, the sufficient care which is to be taken by Labour Court, Gandhidham in respect to the new Act, amended Act and new provisions not taken by Labour Court, he should have to be little careful before dealing with such contentions and he has authorised that he can call the Development Commissioner, he can call the Assistant Commissioner of Labour and from both the Authorities, he can inquire with what is the legal position and what is the correct situation and what is the correct position, but, no efforts have been made by him, simply relying upon the contentions raised by the employer. The lawyer of the workmen have not properly assisted to the Labour Court and ultimately, sufferer are such employees concerned. The lawyer of employer has raised such contentions without inquiring correct position and it also not properly assisted to Labour Court and failing in discharging their duties as Court's officer. The advocate is being Court's officer must properly assist the Court in legal proceedings pending with the Court. Lawyers are appeared on whose behalf or representing which party to the proceeding is not relevant but duties caste under Advocates Act and Bar Council read with professional ethics is very

important and now-a-days much relevant. Recently, one Article published in ***(2007) 5 MLJ 72*** *written by Hon'ble Dr. Justice A.R. Laxmanan, Former Judge, Supreme Court of India in topic* **"Advice to Newly Enrolled Advocates"**, *where, certain observations are made by Apex Court and Justice Krishna Iyer and Dr. Justice A.R. Laxmanan which are relevant, therefore, the same are quoted as under :*

> *"The legal profession is one of the most ancient, the most noble and honourable profession. There is unprecedented erosion of human values taking place in almost all fields of activities of mankind. All human activities and institutions are affected very badly by those catastrophic phenomenon. As well informed youths expected to be equipped to practice law in the 21st century, one must be knowing that legal profession and for that matter judiciary is also not totally an exception to it. However, I must hasten to add that it is heartening to note that the condition of the judiciary, meaning thereby, the Bench and the Bar is not that bad when compared to the other institutions. If one wants to hear a shocking description of the degrading standard in the legal profession one may hear the following observations of the Supreme Court in Bar Council, Maharashtra v. M.V. Dabholkar, AIR 1976 SC 242 : (1976) 2 SCC 291 : (1970) 2 SCR 48 :*

"Briefly expressed, these practitioners, according to testimony recorded by the State Disciplinary Tribunal, positional themselves at the entrance to the Magistrates' Courts, watchful of the arrival of potential litigants. At sight, they rushed towards the clients in an ugly screniurage to snatch the briefs, to lay claim to the engagements even by physical fight, to undercut fees and by this unedifying exhibition, sometimes carried even into the Bar Library, solicited and secured work for themselves. If these charges were true, any member of the Bar with elementary ethics in his bosom would be outrages at his brethren's conduct."

If, you do not want to be unduly perturbed, you may take it that Bar Council, Maharashtra v. M.V. Dabholkar, case was only an occasional aberration and not a general condition. But, nobody can even for a moment, doubt the severity of the moral crisis. No individual and no society can ignore except at its own peril, the challenge posed by moral crisis taking place all over the world. The crisis has got a very serious impact on the legal profession and the system of administration of law also. Therefore, as new entrants in the legal profession, who are

bound to, take the role of the leaders of the contemporary society, one must have to act as leaders of a renaissance movement with the object of averting the moral crisis and restoring the moral standards of the community and thereby, restore the past glory, honour and nobility of the profession which has at least to some extent, suffered degradation in the near past. This is the foremost thought for consideration, because I feel that it may be difficult for the present generation to redeem itself from the present plight easily. The new entrants in this field are the hopes of tomorrow. It may be easy for them to be men of character and conduct of a high standard since they are not already affected substantially by the global phenomenon of moral crisis. Prevention is always better than cure. The present generation is thus pinning their hopes on, the new entrants, who must take a vow that come what may, they will not allow themselves to be affected by the moral crisis which has affected the present generation very badly. They must be able to put up a strong Tight against the social evils that has spread among the community, as wild fire, as a consequence of erosion of values in life. They must grow as a new generation, of men, of law or leaders of the society who care for values in life and lead a value based life as

example to the members of the community at large. The sure way to improve the moral standard of the society is to improve the sense of morality of each individual, who ultimately constitutes the society or community and the humanity. Only when all the members of the community decide to live a value based life, the moral standards of the community and humanity can be improved. It may a truly difficult task to perform, but before it is too late, a determined effort in that direction is a must.

In a democratic country like India, Rule of Law is of fundamental importance. Rule of law requires justice to be administered among the citizens. Administration of justice is possible as per the existing system only through Civil and Criminal Courts, other Tribunals and other established forums for adjudication of disputes. Thus, so long as the present system of administration of justice continues, an efficient Bar is the sine qua non *for due administration of justice and for preservation of Rule of law. Therefore, Bar has a very responsible constitutional function to play and nobody who becomes an advocate need have any fear about his future if only one realises one's own responsibilities in the proper perspective and discharges them duly and*

creditably. ***Justice V.R. Krishna Iyer****, the living legend of Indian Judiciary, has said about the role of advocates in a democracy and their responsibilities to the society and the nation :*

> ***"The rule of law cannot be built on the ruins of democracy, for where law ends, tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is unbreakable. And the vital role of the lawyer depends upon his probity and professional life-style. Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice – social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation."***

About professional ethics and the skills to be developed for a successful career, I think I need not mention anything. Because professional ethics, I suppose is a subject

expected to be learnt by the new advocates themselves, by you. As such I will conclude my words once again quoting V.R. Krishna Iyer, J. from Bar Council, Maharashtra v. M.V. Dabholkar, case where the learned judge has delineated the moral standard expected from a practitioner of law. He is of the view that the professional conduct of advocates must be complete in tune with ;

> ***"The setting of a calling to which Lincoln, Gandhi, Lenin and a galaxy of great men belonged. The high moral tone and the considerable public service the Bar is associated with and its key role in the developmental and dispute-processing activities and, above all, in the building up of a just society and constitutional order has earned for it a monopoly to practice' law and an autonomy to regulate its own internal discipline. This heavy public trust should not be forfeited by legalizing or licensing fights for briefs, affrays in the rush towards clients, under-cutting and wrangling among members."***

18. The contentions raised by learned advocate Mrs. Pahwa that once by amended Act, the powers of Labour Commissioner are delegated to the Development Commissioner, then, how the Development Commissioner,

again, re-delegated to the Labour Commissioner or Assistant Commissioner of Labour.

19. Here, the powers have not been re-delegated, but, Assistant Commissioner of Labour has been authorised by the Development Commissioner to Act on their behalf all the duties and functions related to the respective Acts in so far as they related to labour and industrial operations of Kandla Special Economic Zone. Therefore, it is not a delegation by re-delegation or sub-delegation, but, it is a power authorised by the authority to act on their behalf, and therefore, Assistant Commissioner of Labour has power as specific affidavit is filed by the Assistant Commissioner of Labour. No counter is filed by respondent employer pointing out another provisions except the legal submissions is made by learned advocate Mrs. Pahwa, which I may say that it can be considered to be a logical submission, but, nothing on substance to the question involved in this petition. Section 17, on which, Labour Court has relied upon, is itself provided that any officer authorised by him in this behalf means that by issuing each order by Deputy Development Commissioner authorised to Asstt. Commissioner of Labour to discharge all the duties and functions related to respective Acts in so far as they relate to the labour and industrial operations to Kandla Special Economic Zone. This orders are not challenged by respondents before this Court. Therefore, submissions of learned advocate Mrs. Pahwa is

rejected. The order of authorisation in favour of Assistant Commissioner of Labour by Development Commissioner while exercising the powers under Section 17(1) of Amendment Gujarat Act to discharge all the duties and function under respective Act as mentioned in Schedule I is not challenged by respondent employer before Labour Court and even not challenged before this Court. The order of authorisation as referred in the said judgment which are annexed to the petition not disputed by respondents. Therefore, order of authorisation in favour of Assistant Commissioner of Labour is legal and valid and accordingly, order of reference made by Assistant Commissioner of Labour to Labour Court is also legal and valid. The Development Commissioner has rightly exercised the powers under Section 17(1) of Amendment Act (Gujarat) and authorised to Assistant Commissioner of Labour to discharge all the duties. Therefore, Assistant Commissioner of Labour has jurisdiction to refer dispute for adjudication to the Labour Court, Gandhidham and view taken by Labour Court is contrary to Section 17(1) and order of authorisation under Section 17(1) by Development Commissioner is, therefore, legal and valid.

20. Therefore, Section 11/12 of the Special Economic Zone act, Section 17 of amended Act, as understood by learned advocate Mrs. Pahwa that powers remains with the Development Commissioner in respect to Special Economic Zone, Kandla and it was not delegated to Assistant Commissioner of Labour or Labour Commissioner is not correct interpretation.

Section 11 and Section 12 are not applicable to the facts of this case. The powers can be delegated to the employees or officers working under the Development Commissioner is totally irrelevant, because, here, the only question and simple as to whether on the date of raising the dispute by concerned employees before the Assistant Commissioner of Labour, Gandhidham has jurisdiction under Section 10(1) of the Industrial Disputes Act, 1947 to refer the industrial disputes to the concerned Labour Court, Gandhidham or not. If the Assistant Commissioner of Labour is authorised by the Development Commissioner vide issuing order on each occasion for a period of three months and on that basis, the dispute is referred for adjudication, then, contention raised by learned advocate Mrs. Pahwa is not able to point out to this Court that on the date, on which, the dispute is referred for adjudication by Assistant Commissioner of Labour has no jurisdiction or authorised by Development Commissioner. The Development Commissioner has not authorised to Assistant Commissioner of Labour, Gandhidham to refer the dispute for adjudication. No such notification is placed on record, no such provisions pointed out by learned advocate Mrs. Pahwa, no such submission is made. Merely, some efforts have been made to interpret the Section 11, Section 12 and Section 17, but, reality is otherwise that on the date on which the dispute was referred for adjudication, whether Development Commissioner has authorised to the Assistant Commissioner of

Labour or not. Considering the affidavit-in-reply of Assistant Commissioner of Labour, the Assistant Commissioner of Labour was authorised by Development Commissioner to refer the dispute for adjudication. The relevant periodical orders are quoted as under issued by Deputy Development Commissioner at Page 24, 25, 27 and 28 to the petition :

> ***"Order dated 15/18-10-2004 passed by Deputy Development Commissioner, Kandla Special Economic Zone – Page 24.***
>
> *Section 17 of the Gujarat Special Economic Zone Act, 2004 confers the Development Commissioner with powers, duties and functions of Labour Commissioner in respect of the statutes mentioned in Schedule I to the said Act.*
>
> *Therefore, in terms of letter No.L.C.1.C. O.D.A.-2004/2328 dated 06-09-2004 from the Commissioner of Labour, Government of Gujarat, Ahmedabad, the Development Commissioner, Kandla Special Economic Zone (KASEZ), Gandhidham hereby authorize the Asstt. Labour Commissioner, Government Labour Office, Gandhidham and the Asstt. Director, Industrial Safety and Health, Adipur and Boiler Inspector, Rajkot to discharge till 31-03-2005, or till as may be otherwise specified, all the duties and functions related to the respective Acts, in so far as*

they relate to the labour and industrial operations of Kandla Special Economic Zone, as hitherto. All statutory intimations, reports, appeals, etc., on these matters shall lie with the Development Commissioner as per the power delegation Scheme under the Gujarat Special Economic Zone Act, 2004.

This issues with the approval of the Development Commissioner, Kandla Special Economic Zone.

Order dated 31/3/2005 passed by Deputy Development Commissioner, Kandla Special Economic Zone – Page 25.

In continuation to this Office Order of even number dated 18/10/2004 the Development Commissioner, Kandla Special Economic Zone (KASEZ), Gandhidham hereby authorizes the Asstt. Labour Commissioner, Government Labour Office, Gandhidham and the Asstt. Director, Industrial Safety and Health, Adipur and Boiler Inspector, Rajkot to discharge till 30/9/2005, or till as may be otherwise specified, all the duties and functions related to the respective Acts, in so far as they relate to the labour and industrial operations of Kandla Special Economic Zone. All statutory intimations, reports, appeals, etc., on these matters shall lie with the Development Commissioner as per the power

delegation Scheme under the Gujarat State Special Economic Zone Act, 2004.

This issues with the approval of the Development Commissioner, Kandla Special Economic Zone.

Order dated 31/03/2006 passed by Deputy Development Commissioner, Kandla Special Economic Zone – Page 27.

In continuation to this Office Order of even number dated 25/10/2005 the Development Commissioner, Kandla Special Economic Zone (KASEZ), Gandhidham hereby authorizes the Asstt. Labour Commissioner, Government Health, Adipur and Boiler Inspector, Rajkot, to discharge till 30/09/2006, or till as may be otherwise specified, all the duties and functions related to the respective Acts, in so far as they relate to the labour and industrial operations of Kandla Special Economic Zone. All statutory intimations, reports, appeals, etc., on these matters shall lie with the Development Commissioner as per the power delegation Scheme under the Gujarat State Special Economic Zone Act, 2004.

This issues with the approval of the Development Commissioner, Kandla Special Economic Zone.

Order dated 26/27-9-2006 passed by Deputy Development Commissioner, Kandla Special Economic Zone – Page 28.

In continuation to this office order of even number dated 31-3-2006 the Development Commissioner, Kandla Special Economic Zone (KASEZ) is hereby authorizes the Asstt. Labour Commissioner, Labour Office, Government of Gujarat, Gandhidham and the Asstt. Director, Industrial Safety and Health, Adipur and Boiler Inspector, Rajkot to discharge till 31-3-2007, or till as may be otherwise specified, all the duties and functions related to the respective Acts, in so far as they relate to the labour and industrial operations of Kandla Special Economic Zone. All statutory intimations, reports, appeals, etc., on these matters shall lie with the Development Commissioner as per the power delegation scheme under the Gujarat State Special Economic Zone Act, 2004.

This issues with the approval of the Development Commissioner, Kandla Special Economic Zone.“

21. This Court has, initially passed the following order while issuing notice on 19.09.2007 to the respondents :

1. Heard Ms. Sangita Athawale, learned advocate appearing for the petitioners.

2. The petitioners have challenged the award dated 30th September, 2006, passed by Labour Court, Gandhidham at Kuchchh in Reference LCG Nos.4/05 to 48/05, 62/05 to 94/05, 100/05 to 102/95. The Labour Court, Gandhidham at Kuchchh rejected the aforesaid references on preliminary point which was raised by the respondent employer. The petitioners workmen were serving with the respondent i.e. Hindustan Lever Limited and their services were terminated by resopndent against which, under Section 2(A) of Industrial Disputes Act, 1947, industrial dispute was raised before Assistant Labour Commissioner, Gandhidham at Kuchchh. After the dispute referred to the Labour Court, the Labour Court has issued notice to the respondents and thereafter respondents appeared in the proceedings and raised preliminary contention that in the light of Notification/Public Ordinance dated 10th February, 2004 of State Government as per Section 17(A), the powers of Labour Commissioner is delegated to Development Commissioner and Labour Commissioner has no jurisdiction to deal with the matter pertaining to Industrial Disputes Act, 1947. According to the respondents only Development Commissioner, under Sub-section (1) of Section 17 of Public Ordinance, has jurisdiction to refer the dispute for adjudication and no other authority has power

to refer the dispute for adjudication.

3. The above contention was replied by the petitioners and documents were produced by respective parties. Ultimately, Labour Court has considered the provisions of Industrial Disputes Act, 1947 and Notification dated 10th February, 2004 vide which delegation of powers of Labour Commissioner to Development Commissioner wherein it is made clear that notwithstanding anything contained in the acts specified in Schedule-I, the powers, duties and functions confer on Commissioner of Labour of any officer under those acts shall be exercised by the Development Commissioner or any officer authorized by him in this behalf. The State Government may amend Schedule-I. The State Government has written a letter to Assistant Labour Commissioner, Gandhidham at Kuchchh for implementation of Special Economic Zone, 2004 by letter dated 6th September, 2004 that now in pursuance to the notification dated 30th March, 2004, the Gujarat Special Economic Zone Act has come into effect and the same is to be implemented and for area of Special Economic Zone in respect to Labour Law now, the power is with Development Commissioner. Therefore, accordingly they have to handover all the disputes pending before them to the Development Commissioner under Sub-section (1) of Section 17. Therefore, Labour Court has come to the conclusion that with effect from 1st April, 2004, Special Economic Zone

came into effect and if any dispute subsequent to that only Development Commissioner is having the jurisdiction to refer the dispute for adjudication.

4. The District Development Commissioner, Kandla, Special Economic Zone, 2004 has issued various orders under Section 17 of Gujarat Special Economic Zone Act, 2004 confers the Development Commissioner with powers, duties and functions of Labour Commissioner in respect of statute mentioned in Schedule-I to the said Act which has been authorized by the Development Commissioner in favour of Assistant Labour Commissioner Government Labour Office, Gandhidham and Assistant Commissioner Gandhidham and the Assistant Director, Industrial Safety and Health, Adipur and Boiler Inspector, Rajkot to discharge all the duties and functions related to their respective acts insofar as they relate to Labour and Industrial Operation of Kandla Special Economic Zone and all statutory implementations and reports etc. on this matter shall lay with the Development Commissioner as per the power delegation scheme under the Gujarat Special Economic Zone Act, 2004. This order issued with the approval of the Development Commissioner, Kandla Special Economic Zone. Various orders placed on record by the petitioners which ultimately prove that Development Commissioner has authorized Assistant Labour Commissioner to exercise all

the powers which were delegated in favour of Development Commissioner, Kandla Special Economic Zone.

5. Means in reality, the powers remain with Assistant Commissioner of Labour under Section 10 and under various provisions of Industrial Disputes Act, 1947 to refer the disputes for adjudication, though contentions raised by employer respondents that Assistant Commissioner of Labour has no jurisdiction in light of Sub-section 1 of Section 17 of the Gujarat Special Economic Zone Act, 2004 when the complaint was filed by workmen under Section 2(A) of Industrial Disputes Act, 1947 before Assistant Commissioner of Labour. At that relevant time, no objection was raised by the respondents employer that Assistant Commissioner of Labour has no jurisdiction. Not only that, but even dispute is referred for adjudication to the Labour Court, Gandhidham at Kuchchh, even that order of reference is not challenged by the respondent employer to higher forum. The Labour Court has blindly acted upon the application submitted by the respondents and without inquiring further even with the authority who has referred it that whether authority has power to refer it or not, straightway rejected all the references only on the ground that Assistant Commissioner of Labour has no jurisdiction or power to refer the dispute for adjudication.

6. Due to aforesaid ineffective approach on

the ground Labour Judge who has not made any inquiry whether the Assistant Commissioner of Labour has power or not even no question was raised that this contention was raised at the relevant point of time or not before Assistant Commissioner of Labour by respondent. Therefore, the concerned petitioners those who were out of job since 2004 having the reference in 2005 till 2007 no further progress is made in pending references as all the references are rejected on the ground of jurisdiction of Assistant Commissioner of Labour.

7. Therefore, learned advocate Ms.Sangita Athawle appearing for the petitioner requests this Court to permit her to join Labour Commissioner, State of Gujarat as party respondent no.4.

8. Permission, as prayed for is granted. Commissioner of Labour, State of Gujarat is joined as party respondent.

9. Issue Notice to respondents returnable on 15th October, 2007. Direct Service is permitted.

10. It is directed to newly added party respondent no.4 i.e. Commissioner of Labour, State of Gujarat to file affidavit before this Court on returnable date in respect to the order passed by Labour Court at the relevant time when the reference was made whether Assistant Commissioner of Labour has jurisdiction to refer the dispute for adjudication or not and if Assistant

Commissioner of Labour has jurisdiction then on what basis any notification is issued by the State Government or Development Commissioner. The Commissioner of Labour, State of Gujarat is also directed to place on record such notification with affidavit on the returnable date, i.e. on 15th October, 2007.

11. Office to place the copy of this order in all the connected matters.“

22. Therefore, according to my opinion, the contentions raised by learned advocate Mrs. Pahwa cannot be accepted and award passed by Labour Court, Gandhidham is contrary to the aforesaid authorisation which was given to the Assistant Commissioner of Labour by the Development Commissioner time-to-time which notifications/orders are placed on record by petitioners from Page 24 to 28 of the petitions which are referred above in the present order.

23. Learned advocate Mrs. Pahwa pointed out from Page 26 that all statutory intimation, reports/appeals on this matter shall lie with the Development Commissioner, but, here, it is not a relevant question, but, only question is at Page 26 also mentioned that by number of office orders dated 31st March 2005, the Development Commissioner, Kandla Special Economic Zone, Gandhidham hereby authorised the Assistant Commissioner of Labour to discharge all the duties and functions related to the

respective Acts. So, interpretation which has been made by learned advocate Mrs. Pahwa is not applicable, but, relevant is that Development Commissioner has authorised to Assistant Commissioner of Labour to refer the matter for adjudication.

24. I failed to understand the approach made by Labour Court, Gandhidham who has not taken care while deciding such preliminary point without any care to inquire either from Development Commissioner or Assistant Commissioner of Labour who has referred the matter for adjudication. If the Court is not aware about the recent position in respect to amended Act, then, it is a duty of such Court to inquire from the other officers about the powers under the amended Act. But, no efforts have been made by Labour Court, ultimately, Labour Court has rejected the reference on preliminary ground that Assistant Commissioner of Labour has no jurisdiction to refer the dispute for adjudication. That award itself is bad, contrary to the law and being a basic error committed by the Labour Court in rejecting the reference, therefore, it require to be set aside by this Court.

25. Accordingly, the award passed by the Labour Court in Reference (LCG) No.4 of 2005 to 48 of 2005, No.62 of 2005 to 94 of 2005 and No.100 of 2005 to 102 of 2005 dated 30th September 2006 is hereby quashed and set aside while remanding the matters back to the Labour Court, Gandhidham to decide it on merits being

a legal and valid references made by Assistant Commissioner of Labour after giving reasonable opportunity of hearing to both the parties as early as possible within a period of one year from the date of receiving the copy of the said order.

26. It is made clear that averments made in the affidavit-in-reply by the Assistant Commissioner of Labour in respect to the amended provisions under Section 2(k) and other relevant issues Chapter-VD, this Court is not dealing with it and not expressed any opinion in respect to such aspect which has been referred by respondent in reply, because, it is totally not relevant and connected with the award which has been decided by the Labour Court.

27. Accordingly, rule is made absolute in each petitions. No order as to costs.

Sd/-

[H.K. RATHOD, J.]

#Dave